

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	<u>NOTICE OF MOTION</u>
	:	
v.	:	Indictment No.
	:	15-cr-866 (WHP))
ROGER THOMAS CLARK,	:	
	:	
Defendant.	:	
	:	

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PLEASE TAKE NOTICE that upon the annexed Declarations of JACOB MITCHELL, Esq., ROGER THOMAS CLARK and JOSHUA MICHEL, the accompanying Memorandum of Law and all prior proceedings had herein, the undersigned counsel will move this Court, the Honorable William H. Pauley, at a date and time designated by the Court, for an Order suppressing the evidence and directing the government to prove additional discovery. Mr. Clark seeks to suppress the following:

1. The contents of Silk Road marketplace server private Tor Bridge – images made in June and of July 2013 (IP 193.107.84.4);
2. The contents of Silk Road marketplace server – images made in June and July of 2013 (IP 193.107.86.49);
3. The contents of Silk Road marketplace server – image made pursuant to September 2013 letter request (IP 193.107.86.49);
4. The contents of Silk Road Bitcoin-wallet server – images made pursuant to September 2013 letter request (IP 193.107.86.34);

5. The contents of Silk Road marketplace server - image made pursuant to October 2013 letter request (IP 193.107.86.49);
6. The contents of Silk Road Bitcoin-wallet server – image made pursuant to October 2013 letter request (IP 193.107.86.34);
7. The contents of Silk Road backup server, September 2013 version (IP 207.106.6.25) (obtained pursuant to a search warrant on Windstream Data Center);
8. The contents of Silk Road backup server, September 2013 version (IP 207.106.6.25)(obtained pursuant to a search warrant on JTAN.com);
9. The contents of Silk Road backup server, October 2013 version (IP 207.106.6.25);
10. The contents of the secondary Silk Road backup server (IP 207.106.6.32);
11. The contents of Silk Road private Tor bridge (IP 207.106.6.11);
12. The contents of Silk Road Bitcoin-wallet backup server – image made pursuant to September 2013 warrant (IP 109.163.234.40);
13. The contents of Silk Road Bitcoin-wallet backup server, – image made pursuant to October 2013 warrant (IP 109.163.234.40);
14. The contents of Silk Road private-key server – images made in response to October 2013 Mutual Legal Aid Treaty (“MLAT”) request (IP 62.75.246.20);¹

¹ The IP address for this server is listed in one Rule 16 letter as 65.75.246.20. The correct IP address appears to be 62.75.246.20.

15. The contents of Silk Road discussion-forum server – image made in response to November 2013 letter request (IP 82.221.104.28);
16. The contents of Voxility servers (IPs 109.163.234.40 and 109.163.234.37);
17. The contents of USB thumb drives seized from the residence of Ross Ulbricht on October 1, 2013;
18. The contents of Kindle, seized from Ross Ulbricht's residence on October 1, 2013;
19. The contents of Ross Ulbricht's laptop seized upon his arrest (MAC address 88-52-2E-9C-81-96);
20. The contents of the Facebook account associated with username "rossulbricht";
21. The contents of the Gmail account associated with username rossulbricht@gmail.com;
22. Any items that were seized as a result of the October 2, 2013 search of 235 Monterey Boulevard, San Francisco, California;
23. Any information obtained as a result of the September 16, 2013 Pen-Trap Order directed to Comcast (IP 67.170.232.207);
24. Any information obtained as a result of the September 19, 2013 Pen-Trap Order directed to Comcast (IP 67.169.90.28.);
25. Any information obtained as a result of the September 19, 2013 Pen-Trap Order re: wireless router at 235 Monterey Boulevard (IP 67.169.90.28);

26. Any information obtained as a result of the September 20, 2013 Pen-Trap Order re: wireless router at 235 Monterey Boulevard (IP 67.169.90.28);
27. Any information obtained as a result of the September 20, 2013 Pen-Trap Order re: devices (MAC addresses including 88-53-2E-9C-81-96);
28. Any evidence obtained as a result of a search warrant issued on April 17, 2015, in the Southern District of New York by Magistrate Judge Sarah Netburn for the “content and other information associated with the email account mrweigand@att.net.
29. The contents of a silver and black Acer Aspire laptop seized from Roger Clark’s residence on or about December 3, 2015, (serial number NXM2RST013223110F1200);
30. The contents of a silver MacBook Pro laptop seized from Roger Clark’s residence on or about December 3, 2015, (serial number C02HN0WNDV7P);
31. The contents of a black Hewlett Packard Presario CQ60 with USB dongle inserted seized from Roger Clark’s residence on or about December 3, 2015, (serial number 2CE843138V);
32. The contents of a Seagate Barracuda LP hard drive seized on or about December 3, 2015, from Roger Clark’s residence (Serial number 5YD265A1);
33. The contents of a black and blue Transcend thumb drive (8 GB) seized on or about December 3, 2015, from Roger Clark’s residence;

34. The contents of two Micro Center USB flash drives (32 GB) seized on or about December 3, 2015, from Roger Clark's residence;
35. The contents of a dark grey Olympus *fe* camera seized on or about December 3, 2015, from Roger Clark's residence (serial Number J7I20910);
36. Oral Statements Roger Clark made to Special Agent Michael Joseph of Homeland Security Investigations ("HSI") on or about December 4, 2015, and on or about May 11, 2016;
37. Written statements from Roger Clark to Special Agent Michael Joseph of Homeland Security Investigations ("HSI") dated March 16 (Bates 119-20) and undated (Bates 120-21);
38. An oral statement Roger Clark made to Special Agent Samad Shahrani of the Federal Bureau of Investigation ("FBI") on June 25, 2018;
39. Any evidence obtained directly or indirectly as a result of the warrantless search in the United States of the contents of Silk Road servers by members of law enforcement, including all the material contained on the two 4TB drives the government turned over in discovery in this case on July 31, 2019 (Bates 1 and 2).

Mr. Clark also moves the Court to order the government to turn over the following additional documents pursuant to and the Fifth Amendment to the United States Constitution:

- The name of the software that FBI Special Agent Christopher Tarbell and another member of the Cybercrime Squad ("CY-2") of the New York Field Office of the FBI used to capture packet data sent from the Silk Road server;

- The list of “miscellaneous entries” Agent Tarbell asserts that he or any other member of CY-2 purportedly entered in the username, password and CAPTCHA of the Silk Road login page as part of their attempts in “early June 2013” to locate the Internet Protocol (“IP”) address of the Silk Road website;
- All logs or reports that document efforts Agent Tarbell and another member of CY-2 purportedly made in early June of 2013 as part of their efforts to locate the Internet Protocol (“IP”) address of the Silk Road website;
- All logs of server-error messages Agent Tarbell and another member of CY-2 purportedly received in early June of 2013 in response to entering invalid data into the Silk Road user login page;
- All valid login credentials Special Agent Tarbell and another member of CY-2 purportedly used as part of their efforts in early June of 2013 to locate the IP address of the Silk Road website;
- All invalid login credentials (user names, passwords and CAPTCHA entries) Special Agent Tarbell and another member of CY-2 purportedly used as part of their efforts in early June of 2013 to locate the IP address of the Silk Road website;
- All packet logs recorded during the course of the Silk Road investigation, including packet logs that showed packet headers containing the IP address of the Silk Road server (193.107.86.49) as of early June of 2013;
- The types of devices Agent Tarbell or other members of CY-2 used in early June of 2013 to obtain the Silk Road IP address;
- All reports, notes, photographs or log files that document the hardware configuration of the Silk Road servers, the Ulbricht laptop and any devices seized from Roger Clark as they existed at the time the images turned over by the government to the defense on July 16, 2018, were made;
- The order of the hard drives in any Redundant Array of Independent Disks (RAID) configuration and any data pertaining to the Basic Input/Output System (BIOS) of the server and other devices images of which were turned over by the government to the defense on July 16, 2018;

- The dates, times and location of the forensic examinations of the Silk Road server;
- Information about how law enforcement obtained the IP address of the initial Silk Road server – 193.107.84.4.

This relief is sought pursuant to the Fourth and Fifth Amendments to the United States Constitution, Rule 16 Rule 16(E)(i) of the Federal Rules of Criminal Procedure and Rules 12(b)(3)(C) and 41(h) of the Federal Rules of Criminal Procedure.

Dated: New York, New York
October 31, 2019

/s/
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